

## **EXHIBIT E**

### **Additional Provisions**

#### **1. CONFIDENTIALITY**

**A. Information Considered Confidential**

All Contractor information considered confidential at the commencement of this Agreement is designated in the Attachment to this Exhibit.

**B. Confidential Deliverables: Labeling and Submitting Confidential Information**

Prior to the commencement of this Agreement, the parties have identified in the Attachment to this Exhibit, specific Confidential Information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Contractor, as "Confidential" on each page of the document containing the Confidential Information and presented in a sealed package to the Commission Contracts Officer (CCO). (Non-confidential deliverables are submitted to the Accounting Office.) All Confidential Information will be contained in the "confidential" volume: no Confidential Information will be in the "public" volume.

**C. Submittal of Unanticipated Confidential Information as a Deliverable**

The Contractor and the Energy Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as a confidential deliverable. In this case, Contractor shall follow the procedures for a request for designation of Confidential Information specified in 20 CCR 2505. The Energy Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment to this Exhibit.

**D. Disclosure of Confidential Information**

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

#### **2. INTELLECTUAL PROPERTY ITEMS DEVELOPED PRIOR TO THIS AGREEMENT**

**A. Intellectual property information is designated in the Attachment to this Exhibit.**

**B. The Energy Commission makes no claim to intellectual property that existed prior to this Agreement and was developed without Energy Commission funding.**

**C. The Contractor gives notice that the items listed in the Attachment to this Exhibit have been developed without Energy Commission funding and prior to the start of this Agreement. This list represents a brief description of the prior developed intellectual property. A detailed description of the intellectual property, as it exists on the effective date of this Agreement, may be necessary if Energy Commission funds are used to further develop the listed intellectual property. This information will assist the parties to make an informed decision regarding intellectual property rights and possible repayment obligations.**

3. **ROYALTY PAYMENTS TO ENERGY COMMISSION**

In consideration of Energy Commission providing funding to Contractor, Contractor agrees to pay Energy Commission royalties under the following terms and conditions.

- A. Contractor agrees to pay Energy Commission a royalty of one and one-half percent (1.5%) of the Sale Price on Sales of all Project-Related Products and Rights that the Contractor receives.
- B. Contractor's obligation to make payments to Energy Commission shall commence from the date Project-Related Products and Rights are first sold and shall extend for a period of fifteen (15) years thereafter. Payments are payable in annual installments and are due the first day of March in the calendar year immediately following the year during which Contractor receives Gross Revenues.
- C. Early Buyout. Contractor has the option of paying its royalty obligations to Energy Commission without a pre-payment penalty, provided Contractor makes the royalty payment within two (2) years from the date at which royalties are first due to the Energy Commission. Royalty payment must be in a lump sum amount equal to two (2) times the amount of funds drawn down on the Agreement.
- D. Contractor agrees not to make any Sale, license, lease, gift or other transfer of any Project-Related Products and Rights with the intent of, or for the purpose of, depriving Energy Commission of royalties hereunder. Generally, this means that Contractor will not make any Sale, license, lease or other transfer of Project-Related Products and Rights for consideration other than fair market value. Further, Contractor agrees that such activity constitutes breach of this Agreement and that Contractor agrees to repay within sixty (60) days the amount due under C above (Early Buyout).
- E. Contractor acknowledges that a late payment of royalties owed to the Energy Commission will cause the Energy Commission to incur costs not contemplated by the parties. If a royalty payment is not paid when due, Contractor agrees to pay the Energy Commission a late fee equal to two percent (2%) of the payment due. Additionally, Contractor agrees that royalty payments not paid within fifteen (15) days of the due date shall thereupon become debt obligations of Contractor to the Energy Commission, due upon demand and bearing interest at the maximum interest rate allowed by law.
- F. Contractor shall maintain separate accounts within its financial and other records for purposes of tracking components of Sales and royalties due to Energy Commission under this Agreement.
- G. Payments to Energy Commission are subject to audit as provided for under the Recordkeeping, Cost Accounting and Auditing clause.
- H. In the event of default hereunder, Energy Commission shall be free to exercise all rights and remedies available to it herein, and under law and at equity. The Contractor's failure to pay when due, any amount due and payable shall cause default under this Agreement.

4. **CONFLICT OF INTEREST**

- A. Contractor agrees to continuously review new and upcoming projects in which members of the Contractor team may be involved for potential conflicts of interest. Contractor shall inform the Commission Contract Manager (CCM) as soon as a question arises about whether a potential conflict may exist. The CCM and Commission's Chief Counsel's Office shall determine what constitutes a potential conflict of interest. The Energy Commission reserves the right to redirect work and funding on a project if the Commission's Chief Counsel's Office determines that there is a potential conflict of interest.
- B. The Contractor shall submit an economic interest statement (Fair Political Practices Commission's Form 700) from each employee or subcontractor whom the Energy Commission's Chief Counsel's Office, in consultation with the CCM, determines is a consultant under the Political Reform Act and, thus, subject to the requirements and restrictions of the Act. Such determination will be based on the nature and duration of the work to be performed by the employee or subcontractor. The determination as to who is a consultant under the Political Reform Act shall be requested by the CCM before work by the employee or subcontractor begins. Each employee and subcontractor determined to be a consultant under the Political Reform Act shall be subject to the same disclosure category or categories applicable to the Energy Commission staff who perform the same nature and scope of work as the consultant.
- C. No person, firm, or subsidiary thereof who has been awarded a consulting services agreement may submit a bid for, nor be awarded an agreement for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services agreement. This does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services agreement which amounts to no more than ten percent (10%) of the total monetary value of the consulting services agreement.

5. **PURCHASE OF EQUIPMENT**

- A. Equipment identified in this Agreement is approved for purchase.
- B. Equipment not identified in this Agreement shall be subject to prior written approval from the CCM.
- C. All Equipment purchased with Energy Commission funds is subject to the following terms and conditions:
  - 1) The Commission Contracts Officer will complete and file a Uniform Commercial Code (UCC.1) Financing Statement with the Secretary of State's Office. Invoices for Equipment purchases associated with a UCC.1 will not be processed until the UCC.1 has been filed with the Secretary of State's Office.
  - 2) Title to all non-expendable Equipment purchased in part or in whole with Energy Commission funds shall remain with the Energy Commission.

- 3) Contractor shall assume all risk for maintenance, repair, destruction and damage to Equipment while in the possession or subject to the control of Contractor. Contractor is not expected to repair or replace Equipment that is intended to undergo significant modification or testing to the point of damage/destruction as part of the work described in Exhibit A, Scope of Work.
- D. Upon termination or completion of this Agreement, the Energy Commission may:
- 1) if requested by the Contractor, authorize the continued use of such Equipment to further energy research in the public interest;
  - 2) by mutual agreement with the Contractor, allow the Contractor to purchase such Equipment for an amount not to exceed the residual value of the Equipment as of the date of termination or completion of this Agreement; or,
  - 3) request that such Equipment be delivered to the Energy Commission with any costs incurred for such return to be borne by the Energy Commission.

6. **PREVAILING WAGE**

For purposes of this paragraph, “public works” means construction, alteration, demolition, installation, repair or maintenance work over \$1,000; and “Contractor” means all contractors that provide public works activities for the Project.

A. Contractor/General Requirements

Contractor shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for any public works activities performed on the Project funded by this Agreement. For purpose of compliance with prevailing wage law, the Contractor shall comply with provisions applicable to an awarding body. Compliance with state prevailing wage law includes without limitation: payment of prevailing wage as applicable; overtime and working hour requirements; apprenticeship obligations; payroll recordkeeping requirements; and other obligations as required by law.

Contractor shall certify to the Energy Commission on each Payment Request Form, that prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Contractor and all contractors complied with prevailing wage laws. Prior to the release of any retained funds under this Agreement, the Contractor shall submit to the Energy Commission a certificate signed by the Contractor and all subcontractors performing public works activities stating that prevailing wages were paid as required by law.

B. Flowdown Requirements

Contractor shall ensure that all agreements with subcontractors for public works activities for the Project contain the following provisions:

- 1) Subcontractor shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for all construction, alteration, demolition, installation, repair or maintenance work over \$1,000 performed under the Agreement. Subcontractor's obligations under prevailing wage laws include without limitation: pay not less than the applicable prevailing wage for public works activities performed on the Project; comply with overtime and working hour requirements; comply with apprenticeship obligations; comply with payroll recordkeeping requirements; and comply with other obligations as required by law.
- 2) Subcontractor shall ensure that the above requirements are included in all lower tier subcontracts for public works activities for the Project.

**CO to decide whether the following clauses are appropriate for this specific Agreement.**

7. **WORK AUTHORIZATIONS**

A. Process

- 1) The CCM, with the assistance of the Contractor shall prepare Work Authorizations (WAs) directing the work of the Contractor. The CCM will provide the WA format.
- 2) The WA shall be signed by the Contractor's authorized individual and by the CCM. The CCM shall sign after the Contractor. In addition to the CCM, the WA may also be signed by Energy Commission staff serving as Project Manager for the individual WA.
- 3) The CCM shall submit the signed WA to the Commission Contracts Officer. The WA will be submitted to the Department of General Services (DGS) for review and final approval. No work shall begin until the WA is approved by DGS. The effective date of the WA is the DGS approval date.
- 4) DGS returns the approved WA to the Contracts Office for final distribution.

B. Content of WA

Each WA shall include:

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- 1) Agreement Number
- 2) WA Number
- 3) WA Title
- 4) Effective Date (date approved by The Department of General Services)
- 5) End Date
- 6) Funding Source
- 7) Objective or goal of the WA
- 8) What task the WA falls within in the Agreement
- 9) Detailed scope of work and tasks
- 10) Schedule of Due Dates and Deliverables

- 11) Contact Information
- 12) Contractor and Subcontractor personnel who will perform the work
- 13) Identification of DVBE, if applicable
- 14) Detailed Budget
  - ☐ Hours and unloaded hourly rates by person or job classification, as allowed by Agreement budget
  - ☐ Fringe benefits rates, indirect overhead rates, general & administrative rates and profit rates.
  - ☐ Travel and per diem, as allowed by Agreement budget
  - ☐ Other direct operating expenses, as allowed by Agreement budget
- 15) Other items as required by CCM

C. Amendments.

- 1) An amendment is required for the following changes, including but not limited to:
  - ☐ Changes to the scope of work (i.e. new or changed work)
  - ☐ Adding Funds
  - ☐ Extending the Term
- 2) Amendments shall be approved and signed using the same process as the original WA.
- 3) Amendments must be made prior to the termination date of the original WA or as amended.
- 4) WA budget reallocations in accordance with the Budget Reallocation provision in Exhibit B.

D. Changes without Amendment

The CCM may make the following changes to the WA without an amendment upon written notification to Contractor:

- 1) Changes to deliverable due dates, as long as the due dates do not go beyond the end term of the WA.
- 2) Minor scope of work changes that only correct grammatical errors or reference mistakes.
- 3) Changes to add or replace persons providing service as directed by the CCM. The process for adding, replacing or substituting persons providing service on a WA is included in Exhibit D, Subcontracts paragraph.
- 4) WA budget reallocations in accordance with the Budget Reallocation provision in Exhibit B.

E. Stop Work

The Energy Commission reserves the right to require the Contractor to stop or suspend work on any WA. The CCM, in consultation with the CCO, shall provide notice in writing to the Contractor of the date work is stopped or suspended. Costs incurred up to that date shall be reimbursed in accordance with the Stop Work clause in Exhibit D.

F. Termination of WA

The CCM, in consultation with the CCO, may terminate the WA without cause with 30 days written notice to Contractor. Costs incurred up to that date shall be reimbursed in accordance with the termination clause in Exhibit D.

G. Incorporated into Agreement

Each WA shall be incorporated into this Agreement. However, it is understood and agreed by both parties that all of the terms and conditions of this Agreement shall remain in force with the inclusion of any such WA. A WA shall in no way constitute an independent Agreement, nor in any way amend or supersede any of the other provisions of this Agreement.

H. Payment

Payment for services is based upon an approved budget in each WA. Any costs or expenses incurred by the Contractor or any subcontractor that have not been identified in the WA shall be borne by the Contractor.

I. Costs

The actual cost of an approved, completed WA shall not exceed the authorized amount of the WA budget. If, in the performance of the WA, the Contractor or CCM determines that the total cost might exceed the WA budget amount, Contractor or CCM shall immediately notify the other. Upon such notification, the CCM may:

- 1) Amend the WA scope of work to accomplish the work within the budget; or
- 2) Amend the WA to augment the budget; or
- 3) Direct the Contractor to complete the work for the budgeted amount without changes to the scope of work;
- 4) Terminate the WA.

8. **MULTI-YEAR FUNDING**

**Contract Officer to customize—use this term when the termination date is after the expiration date of the first year's funding.**

Funding for this Agreement is from two (change number if more than two) fiscal years (FY), \$100,000 from FY 2008-09 and \$100,000 from FY 2009-10. Funding for FY 2008-09, expires on June 30, 2011. To make payments from FY 2008-09 prior to the expiration date, all contract services, products, deliverables and invoices using these funds must be received by the Energy Commission by April 30, 2011. The Energy Commission does not warrant or guarantee that payment will be made for services, products or deliverables performed if invoices are received after April 30, 2011.